

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



November 14, 2002

Agenda ID #1373

TO: PARTIES OF RECORD IN APPLICATION 01-11-048

This is the proposed decision of Administrative Law Judge (ALJ) Rosenthal, previously designated as the principal hearing officer in this proceeding. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Pursuant to Resolution ALJ-180, a Ratesetting Deliberative Meeting to consider this matter may be held upon the request of any Commissioner. If that occurs, the Commission will prepare and mail an agenda for the Ratesetting Deliberative Meeting 10 days before hand, and will advise the parties of this fact, and of the related ex parte communications prohibition period.

The Commission may act at the regular meeting, or it may postpone action until later. If action is postponed, the Commission will announce whether and when there will be a further prohibition on communications.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ CAROL A. BROWN
Carol A. Brown, Interim Chief
Administrative Law Judge

CAB:jyc

Decision **PROPOSED DECISION OF ALJ ROSENTHAL** (Mailed 11/14/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of L.A. Top Shuttle, Inc, dba Shuttle One, a California Corporation to modify its Scheduled Service, on existing authorized service area Decision (90-96-040) stage authority (PSC-6235) to certain portions of Los Angeles County, Orange County, Riverside County, Ventura County and San Bernardino County on one hand and Los Angeles International Airport (LAX), Orange County Airport (SNA) and Ontario Airport (ONT) on the other hand.

Application 01-11-048
(Filed November 14, 2001)

Entezamoldin Nazemzadeh and Ardeshir Amjadi,
for Shuttle One, applicant.
John E. deBrauwere, Attorney at Law,
for Airport Shuttle, and
Bruce Hector, M. D. and Michael S. Mitchell,
for MSSS, protestants.

O P I N I O N

1. Summary

L.A. Top Shuttle One, Inc., dba Shuttle One (Applicant), denied an expansion of its scheduled shuttle service for failure of proof.

2. Categorization

In Resolution ALJ 176-3079, dated January 9, 2002, the Commission preliminarily categorized this matter as ratesetting and preliminarily determined that no hearings were required. The Scoping Memo affirmed the categorization

of ratesetting, but determined that hearings were necessary. We confirm the categorization of ratesetting and the determination that hearings were required.

3. Protests

Protests were filed by Ground Systems, Inc. (Airport Bus) and Mickey's Space Ship Shuttle (MSSS). A telephonic Prehearing Conference (PHC) was conducted by the Administrative Law Judge (ALJ) on April 22, 2002, followed by the Assigned Commissioner's Scoping Memo of May 9, 2002. Two days of evidentiary hearings were held in Los Angeles on July 25-26, 2002, and the matter was submitted subject to briefs due on September 9, 2002.

4. Factual Background

Applicant presently holds a passenger stage certificate (PSC-6235) entitling it to provide "on call, scheduled service" between various downtown Los Angeles hotels and the LAX, as well as door-to-door service from much of five southern California counties to various airports in that region (Official Notice of Applicant's file). Applicant seeks to provide scheduled service to and from various points in Los Angeles County to LAX, to and from LAX to SNA and various hotels near Disneyland, and to and from LAX to ONT and area hotels. The application also lists charges for this proposed scheduled service in Exhibit A and for door-to-door service in Exhibit AA.

Mr. Nazemzadeh founded Applicant in 1988 and is its sole owner. The current operation is conducted using one vehicle. There are two drivers, Nazemzadeh and Mr. Khan. All door-to-door business to LAX is referred to other shuttle companies since that airport no longer allows both door-to-door and scheduled service by the same carrier. Applicant represents that it has the practical and management experience and financial capability to provide the service it proposes.

Nazemzadeh testified that Applicant would be in full operation within 60 days of receiving authority from the Commission. He further stated that this would be scheduled service, whether or not there were passengers who were waiting for rides. Nazemzadeh estimates that the proposed operation would require 25 vehicles at a cost of about \$52,000 per vehicle. If the vehicles were leased, the cost would be a down payment of \$13,000, plus \$1,200 per month.

Protestants Airport Bus and MSSS have the scheduled service authority sought by Applicant. Protestant Airport Bus currently operates this service. Though authorized to provide scheduled service pursuant to Decision (D.) 00-06-073, MSSS has not commenced operations. Two other carriers also have similar authority but have not yet started serving.

5. Discussion

During the PHC, the ALJ instructed Applicant to prepare a side-by-side comparison of his present scheduled service and that for which he was applying. This was not provided during Applicant's direct presentation and the ALJ told Applicant to have the comparison for the second day of hearing. Applicant again failed to comply, but through questioning it was determined that Applicant wished to expand his authority so that he could take passengers to and from LAX to Anaheim/Disneyland area hotels. No mention was made of ONT.

The Scoping Memo set forth issues that would be considered. Among these issues was Applicant's financial resources. At the evidentiary hearings, the balance sheet contained in Exhibit C to the application became an issue. Nazemzadeh stated that he was not capable of testifying to that balance sheet. What is incontrovertible is that this balance sheet does not reflect the ability of Applicant to finance the acquisition of equipment and personnel in the

magnitude necessary to operate the schedules proposed by Applicant. The witness was questioned about other personal assets that he said would be devoted to the company but refused to specify these assets, even when cautioned by the ALJ that this could be a fatal failure of proof.

Much evidentiary hearing time was taken with charges that Applicant was operating in violation of its Commission authority and contrary to the rules of LAX. Protestant Airport Bus sponsored seven witnesses to this effect. There was testimony relating to abusive conduct towards potential passengers and others by an employee, offers to reduce fares (Exh 5, Exh 9), overcharging, misrepresenting his services as that of a protestant, soliciting passengers who were not prebooked, holding itself out to provide scheduled service between LAX and Anaheim area hotels, and taking prepaid vouchers from Airport Bus customers and either trying to redeem them or demanding cash and telling passengers to seek refunds from Airport Bus. Applicant attempted to refute these charges, but was hampered by his unfamiliarity with hearing procedures, excitability, and evasive responses when he was on the witness stand.

Applicant asserts a present right to transport a passenger from LAX to Anaheim, even though that passenger has not made advance reservations. Applicant's door-to-door authority requires advance booking. The scheduled service tariff does not mention the right to pick up passengers at LAX and transport them to Anaheim. (Applicant's filed tariff.)

One cause of much confusion in this proceeding is the term "on-call scheduled service" contained in Applicant's certificate. Under its tariff, Applicant need not operate over its route if there is no advance notice of a passenger requiring service. We shall not make any change to Applicant's

existing authority to clarify this matter, but direct our Staff to make sure that no new applicants be granted such confusing rights.

Though professing only the desire for expanded scheduled service questioning disclosed that Applicant's proposed tariff sheets provided for rate increases over Applicant's presently filed rates. The proposed tariff sheets also indicated unannounced changes in service areas for door-to-door service. Applicant withdrew that portion of the application containing new tariff rates and service areas and agreed that he would use the presently filed tariff.

Applicant also indicated that he no longer wished to have "on-call scheduled service," but rather traditional service that would offer scheduled trips to particular places at specified times, whether there are passengers available or not. This makes the financial ability of Applicant particularly relevant, in that by his own estimate he will need 22-25 buses and 56 employees to perform this service. This contrasts with the present single bus and two drivers, including the owner, who presently operate Applicant. The complete disavowal of the financial information contained in the application, plus the refusal of Nazemzadeh to present his personal financial information, leaves the record barren of evidence required by Rule 21(i) and gives us no basis to determine whether he can perform the service represented to us.

In our consideration of the evidence we are mindful of the Commission's statement of policy in American Express Shuttle, D.99-10-068, indicating that the Commission would no longer scrutinize the financial information presented in an application for a passenger stage certificate. This was reaffirmed in M & A INTERNATIONAL GROUP, LLC, D.01-05-001. These decisions are distinguishable in that there was at least some weak evidence relating to

financial capability, while in our matter there is absolutely nothing to indicate that Applicant has the financial ability to fulfill his application.

Protestant Airport Bus sought and was granted a subpoena and subpoena duces tecum that he served on the Anaheim Police Department. Records were obtained, but the subpoenaed officer did not appear. Airport Bus asks that sanctions be imposed. We note that loss of whatever evidence the officer would have given did not result in failure of Airport Bus' case. Sanctions will be denied, but we direct our Executive Director to mail a copy of this decision to the Anaheim Police Department, calling attention to this paragraph. We do not expect there to be a future failure to appear by a subpoenaed officer.

6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with § 311(d) of the Public Utilities Code and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

7. Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Sheldon Rosenthal is the assigned ALJ in this proceeding.

Findings of Fact

1. Applicant presently holds passenger stage authority from this Commission (PSC-62335).
2. Applicant operates an "on-call scheduled service" between various hotels in downtown Los Angeles to LAX.
3. Applicant has authority to operate door-to-door service between various points in five southern California counties and various airports in southern California.

4. Since 1999 Applicant has referred all door-to-door requests to other carriers.

5. Applicant seeks authority to operate scheduled service both to and from downtown Los Angeles hotels and LAX, to and from LAX to various area hotels near Disneyland/Anaheim, and to and from LAX and Ontario Airport and area hotels.

6. Applicant presently operates with one bus and two drivers.

7. Applicant estimates that it will need 25 busses and at least 56 drivers to operate as proposed.

8. Applicant admitted that the financial statement contained in its application does not indicate ability to carry out the intended operation.

9. Applicant stated that he would finance the expansion of service from his own resources but refused to indicate what those resources were.

10. There was evidence that Applicant was transporting passengers who had not made prior arrangements with Applicant from LAX to Orange County.

11. There was evidence that Applicant's employee represented that Applicant was an agent of another carrier and could accept prepaid vouchers made out to this carrier.

12. There was evidence that Applicant offered reduced fares.

13. There was evidence that Applicant's driver demanded payment in cash after representing that the vouchers would be honored.

14. There was evidence that Applicant attempted to redeem vouchers of another company.

15. There was evidence that Applicant's driver was threatening and abusive to potential passengers who were hesitant to use his services.

16. Applicant's witness Nazemzadeh contradicted himself many times in his testimony and evaded answers to legitimate questions.

17. There is one carrier currently offering the scheduled service proposed by Applicant.

18. Three other carriers authorized to offer similar service in 2000 have not yet begun operations.

Conclusions of Law

1. We do not find the testimony of Applicant to be convincing.
2. Applicant has failed to meet its burden of proof that the public convenience and necessity requires the requested expansion of his service.
3. This application should be denied.

O R D E R

IT IS ORDERED that:

1. This application is denied.
2. This matter is closed.

This order is effective today.

Dated _____, at San Francisco, California.